IN THE UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION

BARRY W. THOMAS,	CASE NO.: 3:05-CV-507-C
Plaintiff,	
v.)	
LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability company; NETGEAR, INC.; a California corporation, D-LINK SYSTEMS, INC.; a California corporation, CISCO SYSTEMS, INC.; a California corporation; AVAYA INC., a Delaware corporation; and VONAGE AMERICA INC., a Delaware corporation;	JOINT STIPULATION AND ORDER STAYING PLAINTIFF THOMAS' ACTION AGAINST DEFENDANT NETGEAR INC.
Defendants.	

Barry W. Thomas ("Thomas") and NETGEAR, Inc. ("NETGEAR"), through their respective counsel, hereby stipulate to entry of an order staying all claims against each other for the following reasons and upon the following terms and conditions:

WHEREAS, Plaintiff Thomas filed a complaint against NETGEAR on December 6, 2005 alleging that NETGEAR's Voice over Internet Protocol ("VOIP") products infringed U.S. Patent 4,777,354 ("the '354 patent");

WHEREAS, Defendant NETGEAR has denied infringement and counterclaimed for declaratory judgment of noninfringement and invalidity;

WHEREAS, there are eleven separate patent infringement actions involving the '354 patent pending before the Court, each case involving multiple defendants, and in the action against NETGEAR (Case No. 3:05-CV-507-C), Thomas also has pending patent infringement claims against Defendants Level 3 Communications, LLC; Cisco Systems, Inc.; Avaya Inc.; and Vonage America Inc.;

WHEREAS, Thomas and the other defendants have requested a claim construction hearing to construe the terms of the '354 patent;

WHEREAS, NETGEAR's total sales of the accused VOIP products are small vis-à-vis the other defendants;

WHEREAS, both NETGEAR and Thomas expect that settlement discussions would be more fruitful after the actions against the other defendants have been resolved and after the Court

has entered a claim construction order for the other pending cases;

NOW, THEREFORE Thomas and NETGEAR, and their respective counsel of record

hereby stipulate and request entry of the following order:

The present action filed by Plaintiff Thomas against Defendant NETGEAR shall be stayed until the following events have occurred:

(1) Final resolution of the present action between Plaintiff Thomas and

Defendants Level 3 Communications, LLC; Cisco Systems, Inc.; Avaya Inc.;

and Vonage America Inc.; and

(2) The Court has entered a claim construction order in one or more of the

pending actions involving the '354 patent.

In the alternative, in the event that the eleven patent infringement actions involving the '354 patent are finally resolved between Thomas and all other defendants before the Court enters a claim construction order, then the present stay shall expire at that time.

IT IS SO ORDERED.

Signed: June 14, 2006

David C. Keesler

United States Magistrate Judge

STIPULATED AS TO FORM:

/s/ James M. Harrington

James M. Harrington
N.C. Start Bar No. 30005
The Harrington Practice PLLC
1905 J.N. Pease Place, Suite 202
Charlotte, NC 28262

Telephone: (704) 717-8767 Facsimile: (704) 717-8768 James.Harrington@HPrac.com

Attorney for Barry W. Thomas. /s/ James L. Gale

James L. Gale
N.C. Start Bar No. 6160
SMITH MOORE LLP
2800 Two Hannover Square
P.O. Box 27525 (27611)
Raleigh, NC 27601

Telephone: 919.755.8700 Facsimile: 919.755.8800 jim.gale@smithmoorelaw.com

Attorney for NETGEAR, Inc.

OF COUNSEL:

Jennifer A. Ochs, Esq. California State Bar No. 174069

jochs@wsgr.com

California State Bar No. 200

California State Bar No.209858

cparry@wsgr.com

WILSON SONSINI GOODRICH & ROSATI

650 Page Mill Road Palo Alto CA 94304

Telephone: 650.493.9300 Facsimile: 650.493.6811 Attorneys for NETGEAR, Inc.